

103D CONGRESS
1ST SESSION

S. 808

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 19), 1993

Mr. DECONCICI (for himself, Mr. KOHN, and Mr. BOREN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Volunteer Protection
5 Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds and declares
8 that—

1 (1) within certain States, the willingness of vol-
2 unteers to offer their services has been increasingly
3 deterred by a perception that they thereby put per-
4 sonal assets at risk in the event of liability actions
5 against the organization they serve;

6 (2) as a result of this perception, many non-
7 profit public and private organizations and govern-
8 mental entities, including voluntary associations, so-
9 cial service agencies, educational institutions, local
10 governments, foundations, and other civic programs,
11 have been adversely affected through the withdrawal
12 of volunteers from boards of directors and service in
13 other capacities;

14 (3) the contribution of these programs to their
15 communities is thereby diminished, resulting in
16 fewer and higher cost programs than would be ob-
17 tainable if volunteers were participating; and

18 (4) because Federal funds are expended on use-
19 ful and cost effective social service programs which
20 depend heavily on volunteer participation, protection
21 of voluntarism through clarification and limitation of
22 the personal liability risks assumed by the volunteer
23 in connection with such participation is an appro-
24 priate subject for Federal encouragement of State
25 reform.

1 (b) PURPOSE.—It is the purpose of this Act to—

2 (1) promote the interests of social service pro-
3 gram beneficiaries and taxpayers; and

4 (2) sustain the availability of programs and
5 nonprofit organizations and governmental entities
6 which depend on volunteer contributions

7 by encouraging reasonable reform of State laws to provide
8 protection from personal financial liability to volunteers
9 serving with nonprofit organizations and governmental en-
10 tities for actions undertaken in good faith on behalf of
11 such organizations.

12 **SEC. 3. NO PREEMPTION OF STATE TORT LAW.**

13 Nothing in this Act shall be construed to preempt the
14 laws of any State governing tort liability actions.

15 **SEC. 4. STATE STATUTES PROVIDING FOR LIMITATIONS ON**
16 **LIABILITY FOR VOLUNTEERS.**

17 An allotment may be increased for a State under the
18 provisions of section 5, if the State statute referred to
19 under subsection (a) of such section includes the following
20 provisions:

21 (1) Except as provided in paragraphs (2) and
22 (4), any volunteer of a nonprofit organization or
23 governmental entity shall incur no personal financial
24 liability for any tort claim alleging damage or injury

1 from any act or omission of the volunteer on behalf
2 of the organization or entity if—

3 (A) such individual was acting in good
4 faith and within the scope of such individual's
5 official functions and duties with the organiza-
6 tion or entity; and

7 (B) such damage or injury was not caused
8 by willful and wanton misconduct by such indi-
9 vidual.

10 (2) Nothing in this section shall be construed to
11 affect any civil action brought by any nonprofit or-
12 ganization or any governmental entity against any
13 volunteer of such organization or entity.

14 (3) Nothing in this section shall be construed to
15 affect the liability of any nonprofit organization or
16 governmental entity with respect to injury caused to
17 any person.

18 (4) The following conditions on, and exceptions
19 to, the granting of liability may be imposed for pro-
20 tection to any volunteer of an organization or entity
21 required under paragraph (1):

22 (A) The organization or entity shall adhere
23 to risk management procedures, including man-
24 datory training of volunteers.

1 (B) The organization or entity shall be lia-
2 ble for the acts or omissions of its volunteers to
3 the same extent as an employer is liable, under
4 the laws of the State, for the acts or omissions
5 of its employees.

6 (C) The protection from liability shall not
7 apply if the volunteer was operating a motor ve-
8 hicle or was operating a vessel, aircraft, or
9 other vehicle for which a pilot's license is re-
10 quired.

11 (D) The protection from liability shall not
12 apply in the case of a suit brought by an appro-
13 priate officer of a State or local government to
14 enforce a Federal, State, or local law.

15 (E) The protection from liability shall
16 apply only if the organization or entity provides
17 a financially secure source of recovery for indi-
18 viduals who suffer injury as a result of actions
19 taken by a volunteer on behalf of the organiza-
20 tion or entity. A financially secure source of re-
21 covery may be an insurance policy within speci-
22 fied limits, comparable coverage from a risk
23 pooling mechanism, equivalent assets, or alter-
24 native arrangements that satisfy the State that
25 the entity will be able to pay for losses up to

1 a specified amount. Separate standards for dif-
2 ferent types of liability exposure may be
3 specified.

4 **SEC. 5. CERTIFICATION REQUIREMENT AND ADJUSTMENT**
5 **OF SOCIAL SERVICES BLOCK GRANT ALLOT-**
6 **MENTS.**

7 (a) CERTIFICATION AND BLOCK GRANT ALLOT-
8 MENTS.—In the case of any State which certifies, not later
9 than 2 years after the date of the enactment of this Act,
10 to the Secretary of Health and Human Services that it
11 has enacted, adopted, or otherwise has in effect State law
12 which substantially complies with section 4, the Secretary
13 shall increase by 1 percent the fiscal year allotment which
14 would otherwise be made to such State to carry out the
15 Social Services Block Grant Program under title XX of
16 the Social Security Act.

17 (b) CONTINUATION OF INCREASE.—Any increase
18 made under subsection (a) in an allotment to a State shall
19 remain in effect only if the State makes a certification
20 to the Secretary of Health and Human Services, not later
21 than the end of each 1-year period occurring successively
22 after the end of the 2-year period described in subsection
23 (a), that it has in effect State law which substantially com-
24 plies with section 4(a).

1 **SEC. 6. DEFINITIONS.**

2 For purposes of this Act—

3 (1) the term “volunteer” means an individual
4 performing services for a nonprofit organization or
5 a governmental entity who does not receive com-
6 pensation, or any other thing of value in lieu of com-
7 pensation, for such services (other than reimburse-
8 ment for expenses actually incurred or honoraria not
9 to exceed \$300 per year for government service),
10 and such term includes a volunteer serving as a di-
11 rector, officer, trustee, or direct service volunteer;

12 (2) the term “nonprofit organization” means
13 any organization described in section 501(c) of the
14 Internal Revenue Code of 1986 and exempt from tax
15 under section 501(a) of such Code;

16 (3) the term “damage or injury” includes phys-
17 ical, nonphysical, economic, and noneconomic dam-
18 age; and

19 (4) the term “State” means each of the several
20 States, the District of Columbia, the Commonwealth
21 of Puerto Rico, the Virgin Islands, Guam, American
22 Samoa, the Northern Mariana Islands, any other
23 territory or possession of the United States, or any
24 political subdivision of any such State, territory, or
25 possession.